IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.22291 of 2000

Between:

Kumar Shirts, Jinna Tower, Rep by its Local Manger,

P.Suresh, S/o Mallikarjuna Rao, R/o Zinna Tower, Guntur.

..... PETITIONER

AND

1 Deputy Commissioner of Endowments, Guntur.
2 Assistant Commissioner of Endowments, Guntur.
3 Executive Officer, Sri Siddharbattuni Komalangamma

Dhrama Satram, Guntur Town.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ, more particularly in the nature of Mandamus, declaring the order dt.14-12-99 passed in I.D.No.51/99 in O.A.No.72/93 on the file of the 1st Respondent as unjust, arbitrary and contrary to law and consequently set aside the same.

Counsel for the Petitioner : MR.P.V.VIDYASAGAR

Counsel for Respondent No.1 & 2 : G.P. for Endowments.

Counsel for Respondent No.3 : MR.N.GURUGOPAL & S.R.SANKU, SC

The Court made the following :

ORDER :

The petitioner claims to be the tenant of Sri Siddhabattuni Komalangamma Dharma Satram, Guntur. It appears, it is a Private Charitable Trust. In O.A.No.35 of 1977 the Deputy Commissioner of Endowments in exercise of his powers under Section 87 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (for brevity 'the Act') decided that the third respondent Trust is a Public Trust. However, on a suit being O.S.No.53 of 1981 filed by the Manager of the Trust, the Court of District Judge, Guntur, set aside the said finding. Aggrieved by the same, the Endowments Department filed A.S.No.1323 of 1998 before this Court and this Court suspended the decree in O.S.No.53 of 1981.

In the meanwhile, the Executive Officer - third respondent herein, filed O.A.No.72 of 1993 under Section 82 of the Act for eviction of the petitioner treating him as an encroacher. The petitioner herein moved an application being I.A.No.51 of 1991 purportedly under Section 10 of the Code of Civil Procedure, 1908 (CPC) to stay the proceedings in O.A.No.72 of 1993 (Eviction Petition filed by the third respondent). The same was dismissed. In this writ petition, learned counsel for the petitioner Sri P.V.Vidyasagar submits that though initially the decree in O.S.No.53 of 1981 passed by the Court of District Judge, Guntur, was suspended by this Court in A.S.No.1323 of 1998, on an application filed by the tenants, the order was modified to the effect that the interim suspension would not enable the third respondent to effect the possession of the lessee. Therefore, he would urge that no purpose would be served even if the Deputy Commissioner proceeds with O.A.No.72 of 1993, and therefore, it was proper for him to stay the proceedings. These contentions are refuted by the learned Assistant Government Pleader for Endowments.

Admittedly, the application was filed under Section 10 of C.P.C. Exfacie, Section 10 of C.P.C. has no application to the proceedings before the Deputy Commissioner of Endowments while exercising the power either under Section 83 or 87 of the Act. The Deputy Commissioner, who is authorized to pass orders under Section 83 or 87 of the Act cannot be treated as Court, though by reason of Section 149(1) of the Act, the Deputy Commissioner is required to apply the procedure "as nearly as may be", as contemplated under C.P.C. Indeed, in the impugned order also, the first respondent adverted to this matter in a different manner when he observed that as the procedure contemplated under Section 83(b) in summary, an application for stay of the proceedings would not lie. Indeed, as rightly observed by the first respondent, the petitioner herein is not a party to O.A.No.35 of 1977 or O.S.No.53 of 1981 and on the ground that A.S.No.1323 of 1998 is pending, he could not have asked for the stay.

It is needless to point out, the order passed under Section 83 of the Act by the Deputy Commissioner is not an executable order. The same is to be executed by the competent Assistant Commissioner in accordance with Section 84 of the Act and at that stage, it is always open to the petitioner to take steps to protect his possession by obtaining appropriate order from this Court in the pending appeal, if he is so advised.

The writ petition, for the above reasons, is devoid of merits and subject to above observations is accordingly dismissed. No costs.

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(V.V.S.RAO, J.)

08-06-2005.

Msr.

To

1 Deputy Commissioner of Endowments, Guntur.
2 Assistant Commissioner of Endowments, Guntur.
3 Executive Officer, Sri Siddharbattuni Komalangamma

Dhrama Satram, Guntur Town.

4. 2 CCs to Government Pleader for Endowments,

High Court Buildings, Hyderabad.(OUT)

5. 2 CD copies.

HON'BLE SRI JUSTICE V.V.S.RAO

W.P.No.22291 of 2000

08-06-2005

(Msr)